Goh Boon Kim v Taman Sungai Dua Development Sdn Bhd

HIGH COURT (KUALA LUMPUR) — COMPANIES (WINDING-UP) NO S5-22-490-94
LOW HOP BING
21 NOVEMBER 1994

Civil Procedure *— Jurisdiction — Winding-up petition — Case connected with Penang — Whether High Court at Kuala Lumpur has jurisdiction — Application of definition of local jurisdiction in s 3 of the Courts of Judicature Act 1964 — Courts of Judicature Act 1964 s 3*

Civil Procedure *— Injunction — Ex parte injunction to restrain respondent company from raising any form of capital and/or loan stocks and/or altering its paid-up capital — Whether prohibited the holding of a meeting contrary to Rules of the High Court 1980 O 29 r 1(2C)*

In winding-up proceedings, an ex parte injunction was granted to restrain the respondent company from raising any form of capital and/or loan stocks and/or altering its paid-up capital. The respondent applied to set aside the injunction, raising a preliminary objection that the petition should be heard by the Penang High Court. The respondent also objected to the injunction on the ground that it has the effect of prohibiting the holding of a meeting of a body corporate contrary to O 29 r 1(2C) of the Rules of High Court 1980.

Held, dismissing the application:

(1) By virtue of the definition of 'local jurisdiction' in s 3 of the Courts of Judicature Act 1964, the plaintiff is entitled to file an action in any branch of the High Court in Malaya. A branch of the High Court located in any state has concurrent jurisdiction to entertain any civil proceedings.

(2) The injunction is to be construed by reference to the intention as expressed in the injunction itself. If the words contained in the injunction are precise and unambiguous, there is no room for any construction other than the one expounding those words in their ordinary and natural meaning.

(3) Upon proper construction, the injunction does not restrain the respondent from holding a meeting at all.

[Bahasa Malaysia summary

Di dalam prosiding penggulungan, satu injunksi ex parte telah diberikan untuk menyekat syarikat penentang daripada mendapatkan sebarang bentuk modal dan/atau saham pinjaman

dan/atau mengubah modal terbayarnya. Penentang memohon untuk mengetepikan injunksi itu, dengan menimbulkan bantahan awal bahawa petisyen itu harus didengar oleh Mahkamah Tinggi Pulau Pinang. Penentang juga membantah terhadap injunksi itu atas alasan bahawa ia membawa kesan menyekat penjalanan satu mesyuarat sebuah badan korporat bertentangan dengan A 29 k 1(2C) Kaedah-Kaedah Mahkamah Tinggi 1980.

Diputuskan, menolak permohonan itu:

(1) Memandangkan takrif 'local jurisdiction' di dalam s 3 Akta Mahkamah Kehakiman 1964, plaintif berhak memfailkan satu tindakan di mana-mana cawangan Mahkamah Tinggi di Malaya. Satu cawangan Mahkamah Tinggi yang terletak di mana-mana negeri mempunyai bidang kuasa bersama untuk mempertimbangkan apa-apa prosiding sivil.

(2) Injunksi itu mesti ditafsir dengan membuat rujukan kepada niat seperti yang dinyatakan di dalam injunksi itu. Jika perkataan-perkataan yang terkandung di dalam injunksi itu adalah tepat dan tidak kabur, tidak ada tempat untuk sebarang tafsiran selain daripada tafsiran yang memberi erti kepada perkataan-perkataan tersebut mengikut makna mereka yang biasa dan sejati.

(3) Mengikut tafsiran yang sewajarnya, injunksi itu tidak menyekat penentang daripada menjalankan satu mesyuarat sama sekali.]

Notes

For cases on jurisdiction, see 2 *Mallal's Digest* (4th Ed, 1994 Reissue) paras 2092–2255; [1994] *Mallal's Digest* 374–393; [1995] *Mallal's Digest* 237–252.

For cases on injunction, see 2 *Mallal's Digest* (4th Ed, 1994 Reissue) paras 1425–1725; [1993] *Mallal's Digest* 181–201; [1994] *Mallal's Digest* 305–335; [1995] *Mallal's Digest* 193–221.

Cases referred to

Sova Sdn. Bhd. v Kasih Sayang Realty Sdn Bhd [1988] 2 MLJ 268 (refd)

Tan Kim Seng v Tan Kim San [1994] 3 CLJ J 671 (distd)

Legislation referred to

Courts of Judicature Act 1964 ss 3, 23(1)
Rules of the High Court 1980 O 29 r 1(2C)
Companies Act 1965
Companies Regulations 1966

SK Liow (*BC Teh & Yeoh*) for the petitioner.
Ramsum Ho (*Gan Teik Chee & Ho*) for the respondent.

Cur Adv Vult

Low Hop Bing JC: *Application*

On 5 October 1994, I granted an ex parte injunction in chambers pursuant to the petitioner's application. The injunction restrains the respondent whether by itself, its agents or nominees from raising any form of capital and/or loan stocks and/or altering its paid-up capital.

The Affidavits in support of this application are affirmed by the petitioner on the 27 September 1994, and by Goh Siew Geok and Quah Cheow Khoon, both on the 27 September 1994. On 19 October 1994, this application was heard inter partes in order to determine if the injunction should continue or be set aside.

Preliminary objection on forum

The respondent's learned counsel raised a preliminary objection that the proper forum for this petition should be the High Court at Penang because:

(1) the grievances originated from Penang;
(2) the respondent has its registered office in Penang;
(3) the respondent's place of business is in Penang;
(4) the affidavits were affirmed in Penang;
(5) there was initially another case in the High Court at Penang;
(6) the main assets of the respondent are in Penang;
(7) all the witnesses are in Penang; and
(8) it would be inconvenient for the petition to be heard in Kuala Lumpur.

The petitioner's learned counsel replied that there is no proper application for the petition to be transferred to the High Court at Penang. He added that given the urgency of the matter, the petition had to be filed in Kuala Lumpur.

In my judgment, s 23(1) of the Courts of Judicature Act 1964 provides for the local jurisdiction of the High Court and reads as follows:

> Subject to the limitations contained in Article 128 of the Constitution, the High Court shall have jurisdiction to try all civil proceedings where:
> (a) the cause of action arose, or
> (b) the defendant or one or several defendants resides or has his place of business, or
> (c) the facts on which the proceedings are based, exist or are alleged to have occurred, or

(d) any land the ownership of which is disputed is situated within the local jurisdiction of the court and notwithstanding anything contained in this section in any case where all parties consent in writing within the local jurisdiction of the other High Court.

The term 'local jurisdiction' of the High Court is defined in s 3 of the Act as the territorial jurisdiction of the High Court in Malaya and the High Court in Borneo (now Sabah and Sarawak).

By virtue of this definition, the plaintiff is entitled to file an action in any branch of the High Court in Malaya. A branch of the High Court located in any state has concurrent jurisdiction to entertain any civil proceedings: see *Sova Sdn Bhd v Kasih Sayang Realty Sdn Bhd* [1988] 2 MLJ 268 per Lim Beng Choon J.

In the instant case, it suffices for me to say that this court has the jurisdiction to hear and determine the petitioner's ex parte application for injunction and similarly, the defendant's application to set aside the injunction. I therefore rule that this preliminary objection cannot be sustained.

Merits of the respondent's application to set aside ex parte injunction granted on 4 October 1994

It was contended for the Respondent that the said injunction has the effect of stopping the holding of a meeting of a body corporate, ie in this case, a company incorporated under the Companies Act 1965 and therefore contravenes O 29 r 1(2C) of the Rules of High Court 1980, as amended on 2 October 1993.

Learned counsel for the petitioner submitted that according to the ordinary and natural meaning of the words contained in the said injunction, it does not restrain the holding of any meeting.

For the purpose of determining the ordinary and natural meaning of the said injunction, it is necessary for me to reproduce the relevant term of the said injunction as follows:

It is ordered that:

1 The respondent be restrained, whether by itself, or by its agents/ nominees, or otherwise howsoever from raising further capital and/ or loan stocks and/or altering its paid-up capital and authorized capital until after the final disposal of the petition herein.

In ascertaining and determining the scope and implication of the aforesaid term of the said injunction, I am of the considered view that the injunction is to be construed by reference to the intention as expressed in the said injunction itself. If the words contained in the injunction are themselves precise and unambiguous, there is no room for any construction other than the one expounding those words in their ordinary and natural meanings. Effect must be given to the language used, whatever may be the consequences.

Upon a proper construction of the aforesaid term of the said injunction, I hold that it does not in any way restrain the respondent and/or its agents, nominees or otherwise from holding a meeting at all. The aforesaid term is precise, clear and unambiguous in that the respondent etc is restrained from raising further capital and/or loan stocks and/or altering its paid-up capital and authorized capital.

In *Tan Kim Seng v Tan Kim San* [1994] 3 CLJ 671, an injunction was granted to the applicant 'restraining the respondent either on his own behalf or through his agents or servants from voting on the rights attached to the 885,021 shares in Tan Cheong Leong & Sons Realty Sdn Bhd (hereinafter 'The company') held in trust for Tan Kim Kow until further order.' Abdul Malek J held that this was an injunction to stop a particular shareholder from exercising his voting rights and could well come under the prohibition specified in O 29 r 1(2C). His Lordship said:

> Although the order does not actually stop the holding of the extraordinary meeting on the 28 March 1994, in my view, the fact that the respondent despite being present at the meeting was restrained from exercising his voting rights had the effect of stopping the progress of the extraordinary general meeting as if he had been able to exercise his voting rights, the decision on the voting of the resolution could well have been different.

It is to be noted that the term of the injunction granted in the *Tan Kim Seng* case ie 'restraining the respondent ... from voting on the rights attached to the 885, 021 shares ...' differs from the term of the injunction in the case before me in that in the present case, pursuant to the injunction, the Respondent is 'restrained ... from raising further capital and/or loan stocks and/or altering its paid-up capital and authorized capital ...'.

In the *Tan Kim Seng* case, the order specifically refers to the restraining of voting rights which contemplates the holding of a meeting or a meeting which was in effect in progress and so the decision of his Lordship is correct on the facts.

In the instant case, the term of the injunction restrains the respondent from raising further capital and does not prohibit the holding of any meeting or the progress of any meeting at all. The respondent's company is absolutely at liberty to hold any meeting pursuant to its established procedure as prescribed in the company's memorandum and articles of association, Company Regulations 1966 and the Companies Act 1965. The term of the injunction in the instant case has made no mention or reference to the holding of a meeting or the progress of a meeting of the respondent. In the circumstances, the aforesaid term of the said injunction does not offend or contravene the provision of O 29 r 1(2C) at all. Hence, the *Tan Kim Seng* case is distinguishable on the facts and is distinguished accordingly.

In the ultimate analysis, it is my considered view that the words expressed in the injunction and their legal effect must be construed by referring to those words only. No rigid formula can be laid down for the

purpose of determining whether the particular term of an injunction offends or contravenes the provisions of O 29 r 1(2C) in order to render it liable to be set aside. The form and substance of the injunction constitute the crucial factors to assist the court in this determination. In the light of these principles, I hold that the aforesaid term of the said injunction does not offend or contravene O 29 r 1(2C) and therefore I hold that it should not be set aside on this ground.

The respondent did not raise any other ground to support the application to set aside the said injunction. In the circumstances, my decision is accordingly confined to the above ground only. I therefore dismiss the respondent's application to set aside the said injunction, with costs.

Application dismissed.

Reported by Herman L H Poon